

**STATE OF TENNESSEE**

OFFICE OF THE  
ATTORNEY GENERAL  
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July 22, 2002

Opinion No. 02-072 (revised)

Clerks of Court - Costs - Collection - Successful Party - Payment

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**QUESTIONS**

1. Is a clerk of a trial court required to bill and collect filing fees previously paid by the successful plaintiff at the initiation of a lawsuit from the unsuccessful defendant and to pay those costs to the successful plaintiff?
2. If not required, is there authority for clerks of trial courts to receive commissions or fees for collecting and disbursing these reimbursement expenses?

**OPINIONS**

1. Under Tennessee law, a clerk of a trial court is required to collect all costs incident to litigation, including costs and litigation taxes incurred by a successful plaintiff at the initiation of a lawsuit, and to pay them to the successful plaintiff as part of the judgment of the court.<sup>1</sup>
2. The answer to the second question is pretermitted in light of the answer to the first question.

**ANALYSIS**

1. Typically, a plaintiff must pay certain litigation taxes and clerk's fees when filing a new lawsuit. Under Tenn. R. Civ. Pro. 54.04(1), "[c]osts included in the bill of costs prepared by the clerk [of the trial court] shall be allowed to the prevailing party unless the court otherwise directs, but costs against the state, its officers, or its agencies shall be imposed only to the extent permitted by law." *See also* Tenn. Code Ann. § 20-12-101 ("The successful party in all civil actions is entitled to full costs, unless otherwise directed by law, or by a court of record, for which judgment shall be rendered."). Thus, there is no doubt that a successful party in a lawsuit is entitled to recover costs.

This Office has previously opined that costs are considered a part of the final judgment in a case. In particular, this Office has stated:

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<sup>1</sup>The initial version of Opinion No. 02-072 is hereby withdrawn.

Costs are the expenses incident to the conduct of a suit and follow as a matter of course the entry of every final decree. [citations omitted] Thus, costs (including fees of officers for services) are a part of the judgment in a case. Tenn. Code Ann. § 20-12-101; 8 Tenn. Juris. Costs §§ 5-6 (1992).

Op. Tenn. Atty. Gen. No. 99-003 (January 19, 1999). Furthermore, Tenn. Code Ann. § 20-12-119(a) provides that “[i]n all civil cases, whether tried by a jury or before the court, the presiding judge shall have a right to adjudge the cost.” Since under Tenn. Code Ann. § 20-12-101 a successful party is entitled to full costs, trial judges customarily assess costs in a final order against the losing party.

Tenn. Code Ann. § 18-2-102(a) imposes the following duty on the clerks of the trial courts of this state:

It is the duty of each of the clerks of the several courts, upon application of the party entitled, such party’s agent or attorney, made at the office of the clerk, to pay and deliver to the applicant, without delay, any money or property in the clerk’s hands, received by virtue of any decree, judgment or order of the court, or any judge thereof, or by virtue of the clerk’s office.

Thus, the clerk of the trial court is by this statute obligated to pay out any costs of the successful party paid to the clerk by the losing party in satisfaction of the judgment of the court.

The question then becomes what fees and taxes may be included as part of the Bill of Costs. The term “Bill of Costs” is not defined in the Tennessee Code. Tenn. Code Ann. § 8-21-104 does state that “[s]uch officers [which includes the circuit court clerk] shall, on demand, make out a bill of fees and costs in any case or matter, stating each item distinctly. Schedules of fees are listed in subsequent code provisions for various public officers. *See, e.g.*, Tenn. Code Ann. § 8-21-401 (listing of clerk’s fees); Tenn. Code Ann. § 8-21-901 (listing of sheriff’s fees).

Tenn. Code Ann. § 8-21-102 further provides that “[n]o officer is entitled to demand and receive fees allowed by law until the duty or service for which they are granted is performed, unless otherwise expressly provided by law.” Thus, when a plaintiff files a lawsuit, the clerk may initially charge the plaintiff only those fees necessary for the filing of the suit. In a civil case, that amount according to the Shelby County Circuit Court Clerk’s office is \$77.00 which the clerk collects from the plaintiff for services rendered. When the litigation has concluded and if the plaintiff has prevailed, the plaintiff may then seek to recoup the fees previously paid to the clerk as part of the costs which the trial court normally assesses against the losing party.

On the other hand, Tenn. Code Ann. § 67-4-603(c) provides that litigation taxes imposed pursuant to Tenn. Code Ann. § 67-4-602 “shall not be deemed to be costs.” This Office has previously opined that:

These [litigation] taxes, required to be collected at the commencement of an action, are constitutional privilege taxes imposed for revenue purposes, and not costs in any sense. The state litigation taxes, thus, are not refundable to a successful plaintiff upon final determination of the case and assessment of costs against the defendant. . . .

Of course, a court might include the litigation taxes as an element of the damages to which the prevailing party is entitled. A court thus could order a losing defendant to pay the plaintiff a judgment including the litigation taxes. This, however, does not change the legal incidence of the litigation tax. Moreover, a mere assessment of costs against the losing defendant would not include liability for this sum, for its imposition would require specific mention in the court's order.

Op. Tenn. Atty. Gen. 81-504 (September 8, 1981). After this Office issued that opinion, the General Assembly enacted Chapter 925 of the Public Acts of 1982 which amended Tenn. Code Ann. § 20-12-102 to read as follows:

Litigation taxes shall be payable as required by §§ 67-4-602 - 67-4-606. A successful plaintiff in any civil action shall be reimbursed by the defendant for any litigation tax incurred, in the same manner as are costs.

Accordingly, it is the opinion of this Office that under Tennessee law, a clerk of a trial court is required to collect all costs incident to litigation including costs and litigation taxes incurred by a successful plaintiff at the initiation of a lawsuit and to pay them to the successful plaintiff as part of the judgment of the court. In light of the answer to the first question, the answer to the second question is pretermitted and unnecessary.

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